

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

vs.

HUBERT EDWARD ELLZEY, JR

*** CRIMINAL DOCKET NO. 09-248**

*** SECTION: L**

*** VIOLATION: 18 U.S.C. § 1343**

* * *

FACTUAL BASIS

If this matter had gone to trial, the government would have proven beyond a reasonable doubt, through the introduction of competent testimony and admissible exhibits and evidence, including documentary and physical evidence, the following, to support the allegations contained in the one-count Bill of Information now pending against the accused, Hubert Edward ELLZEY, Jr.:

Hubert Edward ELLZEY Jr. was employed as an independent title agent for Commonwealth Land Title Insurance Company of Louisiana (Commonwealth) from MAY 1996 until SEP 2005. During that time period ELLZEY, as an independent title agent, was responsible for receiving, transferring, closing, and disbursing funds from the sale of refinancing of property. In order to be able to do that ELLZEY's business had a bank escrow account where the financing institution would deposit the closing funds into that account and ELLZEY was then responsible for forwarding those funds to the prior lending institution in order to payoff and cancel out that initial loan. ELLZEY's place of

business was located at 3131 Harvard Avenue in Metairie, Louisiana which is in federal judicial district of the Eastern District of Louisiana. At some point prior to JUN 2005 ELLZEY began to use funds which had been deposited into his businesses escrow account by the lenders and for the purpose of cancelling out mortgages, for his own personal use and then floated the funds of subsequent closings to pay off those prior refinanced mortgages which he had converted the funds for his own personal use.

Specifically ELLZEY's scheme included wire frauds which transpired between JUL 2005 and AUG 2005. In that regard:

On 21 JUL 2005 ELLZEY closed a loan for Ann Garibaldi Finley on a refinancing for property located at 576 Morningside Drive in Gretna, Louisiana. The loan, in the amount of \$107,101.85, was funded by Southstar Funding (SOUTHSTAR) and included a first lien pay-off to Midland Mortgage (MIDLAND) in the amount of \$87,067.22. A Disbursement Summary/Balance Sheet in the file showed the incoming funds from SOUTHSTAR and summarized the disbursements, which included MIDLAND's pay-off. ELLZEY provided instructions to SOUTHSTAR on where to wire the money. On 26 JUL 2005 SOUTHSTAR, located in Atlanta, Georgia, wired \$107,101.85 and \$24,947.60, into ELLZEY's escrow account at HIBERNIA. ELLZEY never paid MIDLAND off and converted the funds for his own personal use. On 16 NOV 2005, COMMONWEALTH paid off MIDLAND's first mortgage in the amount of \$89,260.24.

On 27 JUL 2005 ELLZEY closed a loan for Michael Thompson for the refinancing of a property located at 1212-1214 Mazant Street, New Orleans, Louisiana. The \$126,000 loan was funded by Argent Mortgage Company, LLC (ARGENT) and included a pay-off of a lien held by Washington Mutual Bank (WMB) in the amount of \$103,448.97. A Disbursement

Summary/Balance Sheet in the file showed the incoming funds from Argent and summarized the disbursements, which included WMB's pay-off. A review of the loan file found instructions from ELLZEY on where the closing funds should be wired. On 28 JUL 2005, ARGENT, located in Illinois, wired \$123,406.71 into HIBERNIA bank account #672158613, titled Ellzey Title Agency, LLC. ELLZEY was supposed to disburse the closing funds, including the pay-off to WMB, according to a letter sent by ARGENT to ELLZEY, dated 28 JUL 2005. However, ELLZEY never did pay the outstanding lien held by WMB but rather converted the funds for his personal use. ARGENT sent a letter to COMMONWEALTH on 14 OCT 2005 advising them that WMB's lien had not been paid off. On 8 NOV 2005, COMMONWEALTH paid off WMB's lien, which was then \$106,640.13.

On 11 AUG 2005 ELLZEY was supposed to close a loan to Patrick Figueira for the purchase of 168 Valentine Drive, Avondale, La. 70094. The loan, in the amount of \$109,000, was funded by JP Morgan Chase Bank N.A. (JP Morgan) which is located in New York. On 11 AUG 2005, JP Morgan wired \$109,470.75 into the Hibernia account, titled Ellzey Title Agency, LLC. Due to problems with paperwork and the borrower, the loan was not able to be closed yet ELLZEY converted the funds for his own personal use. When the loan did not close, JP Morgan sent a fax to ELLZEY requesting the money be returned yet ELLZEY never returned the fund to JP Morgan.. The fax was sent on 11 AUG 2005, 7 SEP 2005, 15 SEP 2005 and 27 SEP 2005. When ELLZEY failed to return the money, JP Morgan sent a letter dated 8 NOV 2005 to Commonwealth requesting they be reimbursed. On 19 JUN 2006, Commonwealth repaid JP Morgan \$109,470.

On 15 AUG 2005 ELLZEY closed a loan for Michael & Leah Dawsey for the refinancing of property located at 6304 Leslie Street in Metairie, Louisiana. The \$100,000

loan was funded by REGIONS BANK d/b/a/ REGIONS MORTGAGE (REGIONS), and FDIC insured institution located in Mississippi, and included a payoff of a lien on the property held by REGIONS, in the amount of \$41,243.79 and a second held by HIBERNIA, in the amount of \$50,101.45. The borrowers, Michael & Leah Dawsey, were to get \$7,576.44 at closing. The loan file contained a Disbursement Summary which included the liens and the excess cash that would go to the Dawseys. It also showed the total amount of money that REGIONS would be wiring to ELLZEY, \$59,009.89. On 19 AUG 2005, REGIONS wired \$59,009.89 into ELLZEY's escrow account, Ellzey Title Agency, LLC. ELLZEY converted those funds for his personal use. Subsequently ELLZEY issued checks to pay off the outstanding loans but those checks were returned purporting to be with Non Sufficient Funds. Subsequently a letter was received by COMMONWEALTH from REGIONS claiming that ELLZEY's checks to HIBERNIA and to the DAWSEYS were returned as Non Sufficient Funds (NSF). However, subsequently the check from ELLZEY to the Dawsey's had cleared the bank and only the check from ELLZEY to Hibernia was outstanding. On 14 DEC 2005, Commonwealth paid off the lien held by Hibernia in the amount of \$50,811.69

On 16 AUG 2005 ELLZEY closed a loan for Richard Johnson, Jr. for the refinancing of properties located at 3439 Clara Street & 2801 Amelia Street, New Orleans, Louisiana. The loan, in the amount of \$102,425, was funded by ARGENT and included the pay-off of liens held by HIBERNIA in the amount of \$1,839, and HOMECOMINGS FINANCIAL (HOMECOMINGS) in the amount of \$93,495.93.

The loan file contained a Disbursement Summary which detailed the amount ARGENT would be wiring to ELLZEY's account and all of the disbursements to be made with the money. The loan file also contained a pay-off statement, dated 11 AUG 2005, from HOMECOMINGS. On

16 AUG 2005, ARGENT wired \$102,908.06 into ELLZEY's escrow account at HIBERNIA. ELLZEY converted these funds for his own personal use and never paid off the outstanding liens. On 29 NOV 2005 Commonwealth paid off the lien held by Homecomings Financial in the amount of \$96,171.81.

On 26 AUG 2005 ELLZEY closed a loan to Leslie Latino for the purchase of 3720 Purdue Drive, Metairie, Louisiana. The loan in the amount of \$116,000, was funded by WMC Mortgage Corporation(WMC). Although the loan closed on 26 AUG 2005, funds were not scheduled to be disbursed until 31 AUG 2005. Due to Hurricane Katrina's effects on the New Orleans Metro area, the disbursement was delayed. On 7 OCT 2005, WMC wired \$117,620.06 into the HIBERNIA account, titled Ellzey Title Agency, LLC. On 26 OCT 2005, WMC notified Commonwealth via fax, that they had wired the money to ELLZEY Title and subsequently learned that ELLZEY Title was no longer in business. The fax explained that WMC then requested Hibernia to refund the money, but Hibernia was unable to locate the payee, ELLZEY, and did not refund the money. WMC then requested that Commonwealth repay the money. WMC then funded the loan a second time. The second funding was sent through ELLZEY's daughter LAINE's employer, The Title Company. On 17 JUL 2006 Commonwealth repaid WMC the \$117,620 that had been wired to ELLZEY Title.

Upon a more in depth investigation and accounting by Commonwealth and the FBI it was estimated that the amount embezzled by ELLZEY due to wire fraud was approximately \$567,000 USD. In addition ELLZEY also embezzled approximately \$210,000 USD from clients from funds that were provided by lending institutions but that were deposited into his escrow account by means of checks given to ELLZEY and not by way of wire. It is estimated that the total amount of funds which were embezzled by

ELLZEY from Commonwealth refinanced loans totals to approximately \$777,000.00

United States Dollars (USD).

JUAN M. MASINI
Assistant United States Attorney

Date

ROMA KENT
Defense Counsel / Bar Number

Date

HUBERT EDWARD ELLZEY, JR.
Accused

Date